

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

MACUHEALTH, LP  
a Michigan Limited Partnership,

Plaintiff,

Case No. \_\_\_\_\_

v.

Jury Trial Demanded

MEDOP HEALTH, INC.  
A Florida corporation,

Defendant

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**COMPLAINT**

MacuHealth, LP (“MacuHealth”) brings this complaint against MedOp Health, Inc. (“MedOp”) for violations of 15 U.S.C. §1125(a) (Section 43(a) of the Lanham Act), the unfair competition common laws of the State of Michigan, and the Michigan Consumer Protection Act due to MedOp’s false and misleading representations of facts and characteristics of its MaxiVision<sup>®</sup> Meso Plus Formula product to customers for whom both MacuHealth and MedOp compete. As the bases for its Complaint, MacuHealth states as follows:

## **THE PARTIES**

1. Plaintiff MacuHealth, LP (“MacuHealth”) is a Michigan Limited Partnership having a principal place of business at 280 N. Old Woodward Avenue, Suite 107, Birmingham, MI 48009.

2. On information and belief, Defendant MedOp Health, Inc. (“MedOp”) is a Florida Profit Corporation and has a principal place of business at 630 Booker Creek Boulevard, Suite 350, Oldsmar, FL 34677.

## **JURISDICTION AND VENUE**

3. This action arises under the laws of the United States, Title 15 of the United States Code, 15 U.S.C. § 1125(a) and the common law of unfair competition in the state of Michigan and the Michigan Consumer Protection Act, MCL 445.903.

4. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§ 1331, 1332(a) and 1338(b). This Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. §1367(a).

5. This Court has personal jurisdiction over MedOp because MedOp has transacted business in Michigan by among other things marketing, distributing, providing, offering for sale, and/or selling products, including a nutritional supplement for the treatment of macular degeneration called MaxiVision<sup>®</sup>, in the United States and in Michigan, including in this judicial district, such as through the

[www.maxivision.com](http://www.maxivision.com) website and through the [www.naturaleyecare.com](http://www.naturaleyecare.com) website.

Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d).

### **GENERAL FACTUAL BACKGROUND**

7. MacuHealth was established in 2006 and operates a facility at its headquarters in Birmingham, Michigan.

8. MacuHealth manufactures, sells and distributes a dietary supplement for the treatment and prevention of macular degeneration, which MacuHealth sells under the trademarks MacuHealth with LMZ<sup>3</sup> and MacuHealth with LMZ<sup>3</sup> Plus.

9. MacuHealth with LMZ<sup>3</sup> and MacuHealth with LMZ<sup>3</sup> Plus include the active ingredients Lutein, Meso-zeaxanthin, and Zeaxanthin.

10. MacuHealth sells and distributes MacuHealth with LMZ<sup>3</sup> and MacuHealth with LMZ<sup>3</sup> Plus throughout the United States, as well as various other countries in the World.

11. MedOp also markets, sells and distributes dietary supplements to address the effects of aging on eyes, including, for example, macular degeneration, which MedOp sells under the trademark MaxiVision®.

12. MedOp sells a particular formulation of MaxiVision® called MaxiVision® Meso Plus Formula that purportedly includes the active ingredients Lutein, Meso-zeaxanthin, and Zeaxanthin.

13. MedOp has advertised, sold, and shipped MaxiVision<sup>®</sup> Meso Plus Formula to consumers located in Michigan, including in this judicial district.

**COUNT I**

**UNFAIR COMPETITION UNDER 15 U.S.C. §1125(a)(1)(B)**

**(Misrepresentation)**

14. MacuHealth incorporates and reasserts each of the preceding paragraphs herein.

15. MedOp sells bottles of MaxiVision<sup>®</sup> Meso Plus Formula, each bottle containing 90 capsules.

16. A representative bottle of MaxiVision<sup>®</sup> Meso Plus Formula is shown below:



17. A bottle of MaxiVision<sup>®</sup> Meso Plus Formula includes a label adhered thereto, and the label includes a table of “Supplement Facts,” as set forth below:

<b>Supplement Facts</b>		
Serving Size 1 Capsule		
Servings Per Container 90		
Amount Per Serving	% Daily Value	
Mesozeaxanthin	10 mg	**
Lutein (contains FloraGLO®)	10 mg	**
Zeaxanthin	2 mg	**
** Daily Value not established.		

18. The table of “Supplement Facts” on each bottle of MaxiVision<sup>®</sup> Meso Plus Formula lists the following three ingredients and amount of each ingredient that is purported to be included in each capsule:

Mesozeaxanthin	10 mg
Lutein	10 mg
Zeaxanthin	2 mg

19. MedOp owns and operates a website at <http://MedOp.com>, which is also accessible through <http://maxivision.com> (“MedOp’s Website”). Exhibit 1.

20. MedOp advertises the MaxiVision dietary supplement on MedOp’s Website. Exhibit 2.

21. Capsules of MaxiVision<sup>®</sup> Meso Plus Formula do not include 10mg of Lutein.

22. In February 2017, the Nutrition Research Centre Ireland (“NRCI”) conducted an analysis of three separate capsules of MaxiVision<sup>®</sup> Meso Plus Formula taken from lot no. 33690818, and NRCI issued a report dated February 8, 2017. (the “NRCI Report”). Exhibit 3.

23. The NRCI Report indicates that the MaxiVision<sup>®</sup> Meso Plus Formula capsules analyzed by NRCI were provided in a bottle that stated no expiration date. *Id.*

24. The NRCI Report indicates that the MaxiVision<sup>®</sup> Meso Plus Formula capsules include less than 2mg of Lutein. *Id.*

21. MedOp's representations on MedOp's Website and on the MaxiVision<sup>®</sup> Meso Plus Formula bottles that capsules of MaxiVision<sup>®</sup> Meso Plus Formula include 10mg of Lutein are false and misleading and thereby constitute a misrepresentation of the nature, characteristics and/or qualities of MaxiVision<sup>®</sup> Meso Plus Formula.

24. MacuHealth has been and continues to be damaged by MedOp's misrepresentations as described above.

25. MedOp's misrepresentations constitute a violation of 15 U.S.C. §1125(a)(1)(B).

26. MedOp's violations of 15 U.S.C. §1125(a)(1)(B) have been willful and intentional.

## **COUNT II**

### **MICHIGAN COMMON LAW UNFAIR COMPETITION**

28. MacuHealth incorporates and reasserts each of the preceding paragraphs herein.

29. MedOp's misrepresentations of fact as to the ingredients of MaxiVision<sup>®</sup> Meso Plus Formula constitutes unfair competition under the common law of the State of Michigan.

#### **COUNT IV**

#### **MICHIGAN CONSUMER PROTECTION ACT – MCL 445.903(1)**

30. MacuHealth incorporates and reasserts each of the preceding paragraphs herein.

31. MedOp has represented and continues to represent that capsules of MaxiVision<sup>®</sup> Meso Plus Formula include 10mg of Lutein when, in fact, such representation is false.

31. MedOp's misrepresentations with respect to the ingredients of MaxiVision<sup>®</sup> Meso Plus Formula constitute violations of MCL 445.903(1)(c) and (e).

32. MedOp's violations of MCL 445.903(1) have been willful and intentional.

33. MacuHealth is entitled to its reasonable attorneys' fees pursuant to MCL 445.911 as a result of MedOp's violation of the Michigan Consumer Protection Act.

## **PRAYER FOR RELIEF**

WHEREFORE, MacuHealth prays for relief as follows:

A. For a judgment determining that MedOp is liable to MacuHealth for federal unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A);

B. For a judgment determining that MedOp is liable to MacuHealth for unfair competition under the common law of the State of Michigan;

D. For a judgment determining that MedOp is liable to MacuHealth for violation of the Michigan Consumer Protection Act, MCL 445.903(1).

E. For a judgement declaring that MedOp's unfair competition under 15 U.S.C. §1125(a), the common laws of the State of Michigan and under MCL 445.903(1) has been willful and deliberate;

F. For a judgment awarding MacuHealth: (1) MedOp's profits; (2) damages sustained by MacuHealth; and (3) the cost of this action;

G. For a judgment awarding MacuHealth treble MedOp's profits due to MedOp's willful and deliberate unfair competition;

H. For judgment declaring that this case is exceptional per 15 U.S.C. § 1117(a);

I. For a judgment awarding MacuHealth its attorneys' fees;

J. For a judgment awarding the Plaintiff punitive damages as authorized by law;



K. For an order preliminarily and permanently enjoining and restraining MedOp and its officers, directors, employees, agents and servants, and all those in active concert of participation with any of them, from directly or indirectly stating, indicating or implying that its MaxiVision<sup>®</sup> Meso Plus Formula product includes 10 mg of Lutein

L. For such other and further relief as the Court deems just and proper.

**DEMAND FOR A JURY TRIAL**

MacuHealth hereby demands a trial by jury in this action.

Dated: March 20, 2017

Respectfully submitted,

By: /s/Glenn E. Forbis  
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